

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR08-1179

CORNELIOUS PAIGE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 20, 2009

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. CR2007-515]

HONORABLE DAVID L.  
REYNOLDS, JUDGE

AFFIRMED

**LARRY D. VAUGHT, Chief Judge**

Cornelious Paige was convicted by a Faulkner County jury of aggravated robbery, three counts of kidnapping, attempted capital murder, theft of property, aggravated assault, felony fleeing, and misdemeanor fleeing. He was sentenced to eighty-five years' imprisonment. On appeal, he argues that the trial court erred in denying his motion to suppress evidence and in denying his motions for directed verdict. After a thorough review of the record, we find no error and affirm.

On April 13, 2007, three individuals robbed the First Arkansas Bank and Trust in Greenbrier, Arkansas, and escaped with \$149,600. The robbery took place in the morning, approximately twenty minutes before the bank's drive-through window opened for business at 8:00 a.m. Three bank employees were victims of the robbery. They were forced into the bank, ordered to open the vault, and threatened verbally with a gun and knife. One of the

three victims was beaten. When a fourth bank employee arrived for work just before 8:00 a.m., the three robbers had already fled the bank, and the victims were still in the vault. The fourth bank employee immediately called 911 to report the robbery. The report included one of the victim's recollection that, just prior to entering the bank that morning, she observed a maroon, four-door vehicle with tinted windows and an out-of-state license plate, possibly from Illinois, pull into and drive out of the bank's parking lot. The victims also reported that the two robbers inside the bank were black.

Law-enforcement officers began searching for the suspect vehicle, and a vehicle matching the description—a maroon, four-door vehicle with tinted windows and a Missouri license plate—was located by a corporal of the Arkansas State Police. The corporal was unable to determine who was in the vehicle due to the tinted windows. When the corporal turned on his blue lights to initiate an investigatory stop, the vehicle accelerated to speeds in excess of one hundred miles per hour and led law-enforcement officers on an extended and very dangerous chase. During the chase, the suspect vehicle ran two red traffic lights, struck another vehicle, and passed other vehicles on double yellow lines and on the right shoulder. During the chase, six gunshots were fired out the back right side of the suspect vehicle toward the law-enforcement officer in pursuit. When the suspect vehicle became disabled and rolled to a stop, three black men fled on foot. Two of the men were apprehended immediately, James Walker and Paige. The third suspect, Johnta Barber, was apprehended later that afternoon.

The suspect vehicle was searched, and the following evidence was retrieved: cash in an orange duffle bag (some of the cash was bundled in wrappers from First Arkansas Bank and

Trust), five gun-shell casings, a semi-automatic handgun, black clothing including hooded sweatshirts, white gloves, cell phones, and a small pocketknife. On the day of the robbery, law enforcement found \$108,400, the majority of which was found in and about the vehicle, and some was found in Paige's possession. The following day, officers found \$33,000 wrapped in a black shirt in the woods near the final resting point of the suspect vehicle.

Prior to trial, Paige<sup>1</sup> moved to suppress evidence obtained in the search of the suspect vehicle on the basis that the officers did not have reasonable suspicion to believe that the vehicle had been involved in a bank robbery. The trial court denied the motion. During trial, Paige twice moved for a directed verdict on all charges except for the misdemeanor fleeing charge. These motions were also denied. Thereafter, the jury returned guilty verdicts on all of the charges against Paige. He timely appealed.

While Paige presents the challenge to the sufficiency of the evidence as his second point on appeal, preservation of his freedom from double jeopardy requires us to examine the sufficiency argument before addressing trial errors. *Nelson v. State*, 365 Ark. 314, 229 S.W.3d 35 (2006). When the sufficiency of the evidence is challenged, we consider only the evidence that supports the verdict, viewing the evidence in the light most favorable to the State. *LeFever v. State*, 91 Ark. App. 86, 208 S.W.3d 812 (2005). The test is whether there is substantial evidence to support the verdict, which is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or another. *Id.* On review, this court neither weighs the evidence nor evaluates the credibility of witnesses. *Cluck v. State*,

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<sup>1</sup>Paige and Walker were tried together.

91 Ark. App. 220, 209 S.W.3d 428 (2005).

Paige groups his convictions for aggravated robbery, kidnapping, and theft of property together, contending that substantial evidence fails to support these convictions because the three eyewitnesses to the robbery could not identify him as one of the robbers, and the State failed to present any physical evidence that he was in the bank or involved in the robbery. He argues that the only evidence connecting him to the robbery was the fact that he was in possession of stolen money. We disagree.

The three victims of the bank robbery testified that the robbers were black men. One of the victims observed a maroon, four-door vehicle with tinted windows and out-of-state tags pull into and out of the bank parking lot at the time the robbery was in progress. When a vehicle exactly matching that description was located and an investigatory stop of that vehicle was attempted, the vehicle led law-enforcement officers on an extended high-speed chase. During that chase, multiple traffic violations occurred, and six shots were fired from the rear of that vehicle at an officer. When the chase ended, Paige exited the vehicle and continued to flee on foot. When he was apprehended, money from the bank was found in his possession and in the vehicle in which he was a passenger. In and about that vehicle were many items that the victims identified as part of the robbery: an orange duffle bag filled with cash (some still bundled in First Arkansas Bank and Trust wrappers), black clothing, a semi-automatic gun, a knife, gloves, and cell phones.

Guilt may be proved even in the absence of eyewitness testimony, and evidence of guilt is not less because it is circumstantial. *Sanders v. State*, 340 Ark. 163, 8 S.W.3d 520 (2000). Furthermore, identification can be inferred from all the facts and circumstances in

evidence. *Holloway v. State*, 312 Ark. 306, 849 S.W.2d 473 (1993). Finally, flight following the commission of an offense is a factor that may be considered with other evidence in determining guilt. *Parker v. State*, 355 Ark. 639, 144 S.W.3d 270 (2004). Based on these principles, and viewing the evidence in a light most favorable to the State, we hold that substantial evidence supports the three convictions for aggravated robbery, kidnapping, and theft of property.

Next, Paige argues that his conviction for attempted capital murder is not supported by substantial evidence because there was no evidence presented at trial that *he* fired the shots at a law-enforcement officer during the chase. He also claims that the convictions for aggravated assault and felony fleeing are not supported by substantial evidence, because it was undisputed that *he* was not the driver of the suspect vehicle; therefore, *he* had no control over the vehicle. We disagree.

In this case, there is substantial evidence supporting Paige’s convictions for attempted capital murder, aggravated assault, and felony fleeing under the accomplice-liability theory. Arkansas Code Annotated section 5-2-403 (Supp. 2007) defines an accomplice:

(a) A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the commission of an offense, the person:

. . .

(2) Aids, agrees to aid, or attempts to aid the other person in planning or committing the offense . . . .

We will affirm a sufficiency-of-the-evidence challenge if substantial evidence exists that the defendant acted as an accomplice of the offense. *Bienemy v. State*, 374 Ark. 232, \_\_\_ S.W.3d \_\_\_ (2008). There is no distinction between principals on the one hand and accomplices on

the other, insofar as criminal liability is concerned. *Id.* When two or more people assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of the others. *Id.* The presence of an accused in the proximity of a crime, opportunity, and association with a person involved in a crime in a manner suggestive of joint participation, are relevant factors in determining the connection of an accomplice with the crime. *Ashley v. State*, 22 Ark. App. 73, 732 S.W.2d 872 (1987). One cannot disclaim accomplice liability simply because he did not personally take part in every act that went to make up the crime as a whole. *Bienemy, supra.*

Thus, just because Paige could not be positively identified as the gunman and because Paige was not driving the vehicle, his role in the attempted-capital-murder, aggravated-assault, and felony-fleeing offenses is not negated. There was substantial evidence that he aided in the commission of these offenses. He was a passenger in a vehicle that was used in the robbery that set all of the subsequent events into motion. That vehicle led officers on a dangerous high-speed chase and crashed into another vehicle, causing it to roll over several times. Six gunshots were fired out of the back window of the suspect vehicle at a corporal with the Arkansas State Police, who testified that Paige exited the right rear of the vehicle when it finally came to rest. Gunshot-residue tests confirmed that Paige had gunshot residue on his hands. Finally, when the suspect vehicle stopped, Paige did not surrender; he fled on foot. Flight following the commission of an offense is a factor that may be considered with other evidence in determining guilt and may be considered as corroboration of evidence tending to establish guilt. *Hill v. State*, 325 Ark. 419, 931 S.W.2d 64 (1996); *Passley v. State*, 323 Ark. 301, 915 S.W.2d 248 (1996).

In sum, when viewing the evidence in the light most favorable to the State, we hold that there was more than substantial evidence establishing Paige's accomplice liability of attempted capital murder, aggravated assault, and felony fleeing. As such, we hold that the trial court did not err in refusing to grant Paige's motions for a directed verdict.

For his second point on appeal, Paige argues that the trial court erred in denying his motion to suppress. Specifically, Paige argues that there was a lack of reasonable suspicion or probable cause to stop the vehicle in which he was traveling because the information about the vehicle was not specific enough for the corporal to ascertain that he was attempting to stop the correct vehicle. He contends that there was no make or model information provided and that the suspect vehicle had Missouri, not Illinois, tags.

In reviewing a trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court and proper deference to the trial court's findings. *Yarbrough v. State*, 370 Ark 31, 257 S.W.3d 50 (2007). We reverse only if the trial court's ruling is clearly against the preponderance of the evidence. *Id.*

In *Reeves v. State*, 20 Ark. App. 17, 722 S.W.2d 880 (1987), we had occasion to review the line of cases dealing with investigatory stops. We noted that Fourth Amendment protection "against unreasonable searches and seizures" extends to persons driving down the street. However, it has been held that, consistent with the Fourth Amendment, police may stop persons on the street or in their vehicles in the absence of either a warrant or probable cause under limited circumstances. *Terry v. Ohio*, 392 U.S. 1 (1968); *Leopold v. State*, 15 Ark.

App. 292, 692 S.W.2d 780 (1985). One of those limited circumstances involves the investigatory stop. *Reeves, supra*.

The test to be applied in determining whether an investigatory stop has been made consistent with the mandates of the Fourth Amendment is a balancing of the nature and quality of the intrusion against the importance of the governmental interests alleged to justify that intrusion. *Miller v. State*, 21 Ark. App. 10, 727 S.W.2d 393 (1987). Where felonies or crimes involving a threat to public safety are concerned, the government's interest in solving the crime and promptly detaining the suspect outweighs the individual's right to be free from a brief stop and detention. *Miller, supra*. This policy consideration appears in Arkansas Rule of Criminal Procedure Rule 3.1, which provides in part that:

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct.

In determining the reasonableness of the officer's suspicion, Arkansas Rule of Criminal Procedure 2.1 provides the following definition:

"Reasonable suspicion" means a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.

The Arkansas Supreme Court has stated that "[t]he common thread which runs through the decisions makes it clear that the justification for the investigative stops depends upon whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating the person or vehicle may be involved in criminal activity."

*Hill v. State*, 275 Ark. 71, 80, 628 S.W.2d 284, 288 (1982).

In the case at bar, law enforcement had specific, particular, and articulable reasons indicating that the vehicle in which Paige was a passenger had been involved in criminal activity. The vehicle exactly matched the description given by the victim—it was a maroon, four-door vehicle with tinted windows and out-of-state tags. The suspect vehicle was located in Conway, less than thirty minutes after the aggravated robbery that took place in Greenbrier. It was not likely that another vehicle matching the description of the suspect vehicle would have been in that area at that time, just minutes from the small community of Greenbrier, where the crimes had been committed. *Hill v. State*, 275 Ark. 71, 628 S.W.2d 284 (1982) (holding that police had reasonable suspicion to make an investigatory stop based on information that the defendant, who four hours earlier, robbed and shot two men, fled in a late model maroon Ford Thunderbird with dark lettering on a white license plate). Therefore, we hold that the corporal had reasonable suspicion to initiate the investigatory stop of the suspect vehicle.

Paige’s reliance upon *Van Patten v. State*, 16 Ark. App. 83, 697 S.W.2d 919 (1985), is misplaced. There, police initiated a traffic stop of a vehicle that had not committed any traffic violations based only on an anonymous call about a “loud party” and a “brown Jeep.” *Van Patten*, 16 Ark. App. at 86, 697 S.W.2d at 921. The instant case presents very different facts. Here, the person who provided the information was not anonymous; it was the victim. A “loud party” was not the complaint; an aggravated robbery was. The description of the vehicle was more than a “brown Jeep”; it was a maroon, four-door vehicle with tinted windows and an out-of-state license plate. As such, we hold that the information provided

to law enforcement constituted specific, particularized, and articulable reasons indicating the vehicle in which Paige was traveling was involved in the robbery of the First Arkansas Bank and Trust. Accordingly, the trial court did not err in denying Paige's motion to suppress.

Affirmed.

KINARD and BROWN, JJ., agree.